AUTHORITY: 12 U.S.C. 78, 248(i), 371c(f) and 371c–1(e).

SOURCE: 33 FR 9866, July 10, 1968, unless otherwise noted.

INTERPRETATIONS

§ 250.141 Member bank purchase of stock of "operations subsidiaries."

(a) The Board of Governors has reexamined its position that the so-called ''stock-purchase prohibition'' of section 5136 of the Revised Statutes (12 U.S.C. 24), which is made applicable to member State banks by the 20th paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 335), forbids the purchase by a member bank ''for its own account of any shares of stock of any corporation'' (the statutory language), except as specifically permitted

by provisions of Federal law or as comprised within the concept of ''such incidental powers as shall be necessary to carry on the business of banking'', referred to in the first sentence of paragraph ''Seventh'' of R.S. 5136.

(b) In 1966 the Board expressed the view that said incidental powers do not permit member banks to purchase stock of ''operations subsidiaries''—that is, organizations designed to serve, in effect, as separately-incorporated departments of the bank, performing, at locations at which the bank is authorized to engage in business, functions that the bank is empowered to perform directly. (See 1966 Federal Reserve Bulletin 1151.)

(c) The Board now considers that the incidental powers clause permits a bank to organize its operations in the manner that it believes best facilitates the performance thereof. One method of organization is through departments; another is through separate incorporation of particular operations. In other words, a wholly owned subsidiary corporation engaged in activities that the bank itself may perform is simply a convenient alternative organizational arrangement.

(d) Reexamination of the apparent purposes and legislative history of the stock-purchase prohibition referred to above has led the Board to conclude that such prohibition should not be interpreted to preclude a member bank from adopting such an organizational arrangement unless its use would be inconsistent with other Federal law, either statutory or judicial.

(e) In view of the relationship between the operation of certain subsidiaries and the branch banking laws, the Board has also reexamined its rulings on what constitutes ''money lent'' for the purposes of section 5155 of the Revised Statutes (12 U.S.C. 36), which provides that ''The term*branch* * * * shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business * * * at which deposits are received, or checks paid, or money lent.'' [1]

(f) The Board noted in its 1967 interpretation that offices that are open to the public and staffed by employees of the bank who regularly engage in soliciting borrowers, negotiating terms, and processing applications for loans (so-called *loan production offices*) constitute branches. (1967 Federal Reserve Bulletin 1334.) The Board also noted that later in that year it considered the question whether a bank holding company may acquire the stock of a so-called *mortgage company* on the basis that the company would be engaged in ''furnishing services to or performing services for such bank holding company or its banking subsidiaries'' (the so-called *servicing exemption* of section 4(c)(1)(C) of the Bank Holding Company Act; 12 U.S.C. 1843). In concluding affirmatively, the Board stated that ''the appropriate test for determining whether the company may be considered as within the servicing exemption is whether the company will perform as principal any banking activities—such as receiving deposits, paying checks, extending credit, conducting a trust department, and the like. In other words, if the mortgage company is to act merely as an adjunct to a bank for the purpose of facilitating the bank's operations, the company may appropriately be considered as within the scope of the servicing exemption.'' (1967 Federal Reserve Bulletin 1911; 12 CFR 225.122.)

(g) The Board believes that the purposes of the branch banking laws and the servicing exemption are related. Generally, what constitutes a branch does not constitute a servicing organization and, vice versa, an office that only performs servicing functions should not be considered a branch. (See 1958 Federal Reserve Bulletin 431, last paragraph; 12 CFR 225.104(e).) When viewed together, the above-cited interpretations on loan production offices and mortgage companies represent a

[1] In the Board's judgment, the statutory enumeration of three specific functions that establish branch status is not meant to be exclusive but to assure that offices at which any of these functions is performed are regarded as branches by the bank regulatory authorities. In applying the statute the emphasis should be to assure that significant banking functions are made available to the public only at governmentally authorized offices.

departure from this principle. In reconsidering the laws involved, the Board has concluded that a test similar to that adopted with respect to the servicing exemption under the Bank Holding Company Act is appropriate for use in determining whether or not what constitutes *money [is] lent* at a particular office, for the purpose of the Federal branch banking laws.

(h) Accordingly, the Board considers that the following activities, individually or collectively, do not constitute the lending of money within the meaning of section 5155 of the revised statutes: Soliciting loans on behalf of a bank (or a branch thereof), assembling credit information, making property inspections and appraisals, securing title information, preparing applications for loans (including making recommendations with respect to action thereon), soliciting investors to purchase loans from the bank, seeking to have such investors contract with the bank for the servicing of such loans, and other similar agent-type activities. When loans are approved and funds disbursed solely at the main office or a branch of the bank, an office at which only preliminary and servicing steps are taken is not a place where *money [is] lent*. Because preliminary and servicing steps of the kinds described do not constitute the performance of significant banking functions of the type that Congress contemplated should be performed only at governmentally approved offices, such office is accordingly not a branch.

(i) To summarize the foregoing, the Board has concluded that, insofar as Federal law is concerned, a member bank may purchase for its own account shares of a corporation to perform, at locations at which the bank is authorized to engage in business, functions that the bank is empowered to perform directly. Also, a member bank may establish and operate, at any location in the United States, a *loan production office* of the type described herein. Such offices may be established and operated by the bank either directly, or indirectly through a wholly-owned subsidiary corporation.

(j) This interpretation supersedes both the Board's 1966 ruling on *operations subsidiaries* and its 1967 ruling on *loan production offices*, referred to above.

(12 U.S.C. 24, 36, 321, 335)

[33 FR 11813, Aug. 21, 1968; 43 FR 53414, Nov. 16, 1978]

§ 250.142 Meaning of "obligor or maker" in determining limitation on securities investments by member State banks.

(a) From time to time the New York State Dormitory Authority offers issues of bonds with respect to each of which a different educational institution enters into an agreement to make *rental* payments to the Authority sufficient to cover interest and principal thereon when due. The Board of Governors of the Federal Reserve System has been asked whether a member State bank may invest up to 10 percent of its capital and surplus in each such issue.

(b) Paragraph Seventh of section 5136 of the U.S. Revised Statutes (12 U.S.C. 24) provides that ''In no event shall the total amount of the investment securities of any one obligor or maker, held by [a national bank] for its own account, exceed at any time 10 per centum of its capital stock * * * and surplus fund''. That limitation is made applicable to member State banks by the 20th paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 335).

(c) The Board considers that, within the meaning of these provisions of law, *obligor* does not include any person that acts solely as a conduit for transmission of funds received from another source, irrespective of a promise by such person to pay principal or interest on the obligation. While an obligor does not cease to be such merely because a third person has agreed to pay the obligor amounts sufficient to cover principal and interest on the obligations when due, a person that promises to pay an obligation, but as a practical matter has no resources with which to assume payment of the obligation except the amounts received from such third person, is not an *obligor* within the meaning of section 5136.

(d) Review of the New York Dormitory Authority Act (N.Y. Public Authorities Law sections 1675–1690), the Authority's interpretation thereof, and materials with respect to the